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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76192; File No. SR-CBOE-2015-091)

October 19, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange’s website

(<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2015, the Exchange launched Extended Trading Hours ("ETH") for options on the S&P 500 Index ("SPX") and CBOE Volatility Index® ("VIX"), two of the Exchange's exclusively listed options,<sup>3</sup> as alternatives for hedging and other investment purposes, particularly as a complementary investment tool to VIX futures.<sup>4</sup> Rule 6.1A(c) provides that the Exchange may designate as eligible for trading during ETH any exclusively listed index option designated for trading under Rules 24.2 and 24.9. In response to customer demand for additional options to trade during ETH for similar purposes, the Exchange recently designated p.m.-settled options on the Standard & Poor's 500 Stock Index ("SPXpm") to be eligible for trading during ETH. The Exchange commenced trading of SPXpm during ETH on October 1, 2015. As such, the Exchange proposes to establish fees for the trading of SPXpm during ETH (all fees referenced herein are per-contract unless otherwise stated).<sup>5</sup> First, the Exchange proposes to

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<sup>3</sup> An "exclusively listed option" is an option that trades exclusively on an exchange because the exchange has an exclusive license to list and trade the option or has the proprietary rights in the interest underlying the option. An exclusively listed option is different than a "singly listed option," which is an option that is not an "exclusively listed option" but that is listed by one exchange and not by any other national securities exchange.

<sup>4</sup> See Securities Exchange Act Release No. 34-73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR-CBOE-2014-062) (order granting accelerated approval of proposed rule change to adopt Extended Trading Hours for SPX and VIX).

<sup>5</sup> The Exchange initially filed the proposed fee changes on October 1, 2015 (SR-CBOE-2015-083). On October 9, 2015, the Exchange withdrew that filing and submitted this filing.

amend Footnote 37, which provides general information regarding the two trading sessions and indicates which products will be available in ETH, to include trading of SPXpm.

#### Transaction Fees

The Exchange proposes to assess the same fees for SPXpm in the ETH session as are assessed for SPXpm in the Regular Trading Hours session (“RTH”)<sup>6</sup>. As in RTH, the Proprietary Index Options Rate Table will apply during ETH. Transaction fees for SPXpm options will be as follows (all listed rates are per contract):

Customer (Premium > or = \$1)	\$0.44
Customer (Premium < \$1)	\$0.35
Clearing Trading Permit Holder Proprietary	\$0.25
CBOE Market-Maker/LMM	\$0.20
Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker	\$0.40
Professional/Voluntary Professional	\$0.40

Additionally, the Exchange notes that SPXpm transactions executed via AIM during ETH will be assessed AIM Agency/Primary and AIM Contra fees based on an order’s origin code (which is currently the case during RTH as well).

#### Surcharges

The Exchange also proposes to apply in ETH, like RTH, an Index License Surcharge Fee of \$0.13 per contract for SPXpm options for all non-customer orders. The surcharges are assessed to help the Exchange recoup license fees the Exchange pays to index licensors for the right to list S&P 500 Index-based products for trading.

#### LMM Rebate

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<sup>6</sup> Rule 1.1(qqq) defines “Regular Trading Hours” as the hours during which transactions in options may be made on the Exchange as set forth in Rule 6.1 (which hours are from 8:30 a.m. to either. 3:00 p.m. or 3:15 p.m. Chicago time).

CBOE Rule 6.1A (Extended Trading Hours) provides that the Exchange may approve one or more Market-Makers to act as Lead Market-Makers (“LMMs”) in each class during ETH in accordance with Rule 8.15A for terms of at least one month<sup>7</sup>. However, to the extent the Exchange approves Market-Makers to act as LMMs during ETH, subparagraph (e)(iii)(B) of Rule 6.1A provides that LMMs must comply with the continuous quoting obligation and other obligations of Market-Makers described in subparagraph (ii) of Rule 6.1A<sup>8</sup>, but not the obligations set forth in Rule 8.15A<sup>9</sup> during ETH for their allocated classes. It further provides that LMMs do not receive a participation entitlement as set forth in Rules 6.45B and 8.15B during ETH. Rather, pursuant to subparagraph (e)(iii)(C) of Rule 6.1A, if an LMM (1) provides continuous electronic quotes in at least the lesser of 99% of the non-adjusted series or 100% of the non-adjusted series minus one call-put pair in an ETH allocated class (excluding intra-day add-on series on the day during which such series are added for trading) during ETH in a given month and (2) ensures an opening of the same percentage of series by 2:05 a.m. for at least 90% of the trading days during ETH in a given month, the LMM will receive a rebate for that month

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<sup>7</sup> See CBOE Rule 6.1A(e)(iii)(A).

<sup>8</sup> Rule 6.1A(e)(ii) provides that notwithstanding the 20% contract volume requirement in Rule 8.7(d)(ii), Market-Makers with appointments during Extended Trading Hours must comply with the quoting obligations set forth in Rule 8.7(d)(ii) (except during ETH the Exchange may determine to have no bid/ask differential requirements as set forth in subparagraph (A) and there will be no open outcry quoting obligation as set forth in subparagraph (C)) and all other obligations set forth in Rule 8.7 during that trading session. Additionally, notwithstanding the 90-day and next calendar quarter delay requirements in Rule 8.7(d), a Market-Maker with an ETH appointment in a class must immediately comply with the quoting obligations in Rule 8.7(d)(ii) during ETH.

<sup>9</sup> Rule 8.15A (and Rule 1.1(ccc)) requires LMMs to provide continuous electronic quotes in at least the lesser of 99% of the non-adjusted series or 100% of the non-adjusted series minus one call-put pair within their appointed classes, with the term call-put pair referring to one call and one put that cover the same underlying instrument and have the same expiration date and exercise price, for 90% of the time.

in an amount to be set forth in the Fees Schedule.<sup>10</sup> Specifically, for TPHs acting as LMMs in SPXpm options during ETH, the Exchange proposes to provide in the Fees Schedule (new Footnote 39) that if a LMM meets the heightened standard described above, the LMM will receive a rebate of \$1,000 per month. The Exchange believes it is more fitting to implement an incentive program with a rebate during ETH, rather than the obligation/benefit structure that currently exists during RTH. LMMs will not be obligated to satisfy heightened continuous quoting and opening quoting standards during ETH. Instead, LMMs must satisfy a heightened standard to receive a rebate, which the Exchange believes will encourage LMMs to provide liquidity during ETH. Additionally, the Exchange notes that LMMs may have to undertake other expenses to be able to quote at the heightened standard during ETH such as purchase additional bandwidth.

The Exchange also proposes to make a corollary change to Footnote 38. The Exchange notes that currently, for SPX and VIX options, LLMs [sic] are subject to a different rebate program.<sup>11</sup> As such, the Exchange proposes to clarify that such rebate program is for TPHs acting as a LMM during ETH for SPX and VIX options only.

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<sup>10</sup> Notwithstanding Rule 1.1(ccc), for purposes of subparagraph (C) of Rule 6.1A, an LMM is deemed to have provided "continuous electronic quotes" if the LMM provides electronic two-sided quotes for 90% of the time during Extended Trading Hours in a given month. If a technical failure or limitation of a system of the Exchange prevents the LMM from maintaining, or prevents the LMM from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure shall not be considered in determining whether the LMM has satisfied the 90% quoting standard with respect to that option class. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances.

<sup>11</sup> See CBOE Fees Schedule, Footnote 38. If a LMM meets the heightened quoting standard, the LMM will receive a pro-rata share of an LMM compensation pool totaling an amount of \$25,000 per month, per LMM, per class for SPX and VIX.

The Exchange lastly notes that fees, rebates and programs that excluded SPXpm, during RTH will also not apply in ETH.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The proposed transaction fee amounts for SPXpm orders during the ETH session are reasonable, equitable and not unfairly discriminatory because they are the same as the amounts of corresponding fees for SPXpm orders during the RTH session. The Exchange notes that the fee amounts for each separate type of market participant will be assessed equally for each

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<sup>12</sup> See e.g., Exchange Fees Schedule, Liquidity Provider Sliding Scale, Marketing Fee, Clearing Trading Permit Holder Fee Cap, and Volume Incentive Program (“VIP”).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

product to all such market participants (i.e. all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc).

Assessing the Index License Surcharge Fee of \$0.13 per contract to SPXpm during ETH is reasonable because the amount is the same as the amount of the corresponding surcharge for SPXpm orders during RTH. The surcharge fee is equitable and not unfairly discriminatory because it will be assessed to all market participants to whom the SPXpm will apply in both RTH and ETH.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to offer LMMs in SPXpm during ETH that meet a certain heightened quoting standard (described above) a rebate of \$1,000 per month given added costs that a LMM may undertake (e.g., purchase of an additional bandwidth) and because it will encourage LMMs in SPXpm to provide increased liquidity. More specifically, the Exchange believes the amount of the proposed rebate is reasonable because it takes into consideration certain additional costs an LMM may incur and the Exchange believes the proposed amount is such that it will incentivize LMMs to meet the heightened quoting standard. Additionally, if a LMM does not satisfy the heightened quoting standard, then it will not receive the proposed rebate. The Exchange believes it is equitable and not unfairly discriminatory to only offer the rebate to LMMs because it benefits all market participants in ETH to encourage LMMs to satisfy the heightened quoting standards, which may increase liquidity during those hours and provide more trading opportunities and tighter spreads. The Exchange also believes it is more fitting, as well as equitable and not unfairly discriminatory to implement an incentive program with a rebate during ETH, rather than the obligation/benefit structure that exists during RTH. Particularly, the Exchange notes that creating an incentive program in which LMMs must satisfy a heightened standard to receive the rebate, encourages

LMMs to provide significant liquidity during ETH, which is important as the Exchange expects lower trading liquidity and trading levels during ETH and thus fewer opportunities for an LMM to receive a participation entitlement (as they currently do during RTH). Therefore, a rebate is more appropriate than imposing an obligation to receive a participation entitlement. The Exchange notes that offering a rebate during ETH is merely a different type of financial benefit that may be given to LMMs during ETH if it achieves a heightened quoting level. The Exchange believes it is equitable and not unfairly discriminatory to provide a lesser rebate for LMMs appointed in SPXpm options as compared to LMMs for SPX and VIX options because the Exchange expects lower trading volume in SPXpm options during ETH as compared to volume for SPX and VIX. Therefore, it would not be economically viable for the Exchange to offer the same amount of rebate to LMMs in SPXpm as is offered to LMMs for SPX and VIX.

Finally, not applying in ETH fees, rebates and programs that exclude SPXpm during RTH is reasonable because these fees, rebates and programs will not apply to all TPHs and will be consistent across sessions.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For example, Clearing TPHs have clearing obligations that other market participants do not have. Market-Makers have quoting obligations that other market participants



do not have. There is a history in the options markets of providing preferential treatment to Customers, as they often do not have as sophisticated trading operations and systems as other market participants, which often makes other market participants prefer to trade with Customers. Further, the proposed fees, rebates and programs for ETH are intended to encourage market participants to bring liquidity to the Exchange during ETH (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because SPXpm is a proprietary product that will only be traded on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2015-091 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-091, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Robert W. Errett,  
Deputy Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).